

Some things are too important to do them quickly and get it over with. Some things are too important to individuals in this Chamber. And I learned from Majority Leader Mike Mansfield that on the Senate floor everybody is equal except the majority leader and the Democratic leader in this case. And the Chair recognizes them before anybody else. I understand that. That is a precedent. We exercise that. But everybody else has an individual right here. So we exercise that. I hope that we never lose that and that we start working together rather than try to divide, which will not get us together in the future.

I yield the floor, Mr. President.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

LEGISLATIVE BRANCH APPROPRIATIONS FOR FISCAL YEAR 1996

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I think we are talking about unanimous-consent requests here that will allow both of these amendments to be voted on. So let me go ahead and talk about my amendment, which is the amendment that is trying to eliminate set-asides in the Federal procurement process—in the context of this bill as a beginning. And then let me explain why the Murray amendment is a sham amendment that does not deal with the problem but that simply gives cover to those who want to allow set-asides in the funding for the legislative branch.

Let me begin with my amendment. My amendment is the amendment that we have worked on with outside legal groups. It has been endorsed by the leadership in the House, it is being offered by Congressman GARY FRANKS, and it is basically an effort to focus in on one particular problem.

This is a precise, surgical amendment, and what it says is this: The bill before us is the legislative branch appropriations and this amendment deals with nothing except legislative branch appropriations. I plan to offer a similar amendment on other appropriations bills that come to the floor of the Senate this year.

What this amendment says is that in the letting of contracts, in spending money, none of the money will be spent in such a way that requires or encourages the awarding of any contract or subcontract if such an award is based, in whole or in part, on the race, color, national origin, or gender of the contractor or subcontractor.

So what this amendment says in its first part is that when we spend money through the congressional branch of Government, we have to engage in competitive bidding, and that when someone submits the low bid who is qualified, that person will get the contract, and that in no circumstance can the low bidder, who is at least equally

qualified, be denied the contract to give it to someone else based on a preference that flows from race, color, national origin, or gender.

That is part 1 of my amendment.

Part 2 of my amendment has to do with outreach and recruitment activities. And part 2 of the amendment makes it very clear that nothing in this amendment would prevent any effort to help people bid on contracts, to hold seminars on bidding, provide assistance to people who want to bid on contracts, or go out and inform people of the existence of those contracts.

In short, we can expend money. We can exercise tremendous effort to try to help people get on the playing field and to compete. But once contract offers have been submitted, then the selection process must be based on merit—and on merit alone.

The next provision of the bill makes it clear that we are not seeking here to override contracting that is done with schools designated as historically black colleges and universities.

The next provision of the bill makes it clear that this is all prospective. We are not going to go back and undo any existing contracts. In addition, we are not going to override any existing court orders. If a court acts in the future and finds that a remedy for discrimination is the establishment of a set-aside, we are making it very clear that would stand.

Now, basically, that is what my amendment does. And if my amendment is adopted, what it will do is end set-asides in contracting for the legislative branch of Government. If this amendment is adopted and it becomes law, what it means is that none of the money appropriated in this bill can be used for the purpose of letting a contract where anybody is given a contract based on race, color, national origin or gender.

Now, let me talk a minute about the Murray amendment, because what we have in the Murray amendment is the same convoluted language that the President used yesterday. This is more of the same effort to try to use words to confuse. Let me just read it to you, and I think that if you think about it a minute it jumps out at you as to what this amendment is trying to do. Let me read you the language:

None of the funds made available in this act may be used for any program for the selection of Federal Government contracts when such program results in the award of Federal contracts to unqualified persons.

Mr. President, no one is saying that people who get contracts because of race or color or national origin or gender are necessarily unqualified. That is not the point. In fact, it seems as though the whole purpose of this language is to confuse. What we are saying is they are not necessarily the best qualified. They very well may be qualified, but the point is somebody else might have been better qualified or have submitted a lower bid. If all we are doing is saying that you cannot

grant contracts to people who are unqualified, as the Murray amendment says, then we are not doing anything unless I can come in and say: Well, look, I bid a contract to build a sidewalk here at the Capitol and I bid the contract at \$55,000. Someone who was given preference bid the contract at \$155,000, and they got the contract. But under the Murray amendment, the only way that I could get any relief, if I was the contractor who bid it at \$55,000, would be if I could prove that the contractor who got the bid for \$155,000 was unqualified.

Now, they may be qualified; they may be unqualified, but the point is the Federal Government should not be paying \$155,000 for work that it can get for \$55,000. Nor should it be letting contracts in America where somebody is given a special advantage over somebody else.

We listened yesterday as the President gave a very passionate speech, but when you got down to the specific language of the details of the proposal, it was more doubletalk. And the doubletalk basically is the implication that this is an issue about whether a privileged contractor is qualified. It is an issue of whether they are the best qualified.

The second issue has to do with the fact that you cannot give somebody preference over somebody else without discriminating against the person who is not receiving the preference.

In the final analysis, something that the President clearly is clever enough to understand but was hoping we were not clever enough to understand is that whenever you give somebody a special advantage on the basis of race or color or national origin or gender, that means someone else is discriminated against because they do not get that benefit. I believe that what we have got to do is to end set-asides in contracting and what better place to start than in the legislative branch of Government.

So we have before us two amendments. One amendment is a serious, real amendment which says that none of the funds contained in this bill will be used for contracts where someone is given a special privilege so that they get a contract that on the basis of merit they would not have gotten. The other amendment says that none of the funds will be used to award a contract if doing so results in the award of Federal contracts to unqualified persons.

Mr. President, that is not the issue here. The issue here is not whether the contractor who got advantage based on race or color or national origin or gender was qualified. The question is were they the best qualified.

The amendment then goes on to use many terms which are very difficult, if not impossible, to define. For example, "In reverse discrimination." Well, by definition, if the most qualified contractor with the lowest price did not get the contract, I think any reasonable person would call that reverse discrimination.

Now, Mr. President, here is the point, and then I will yield the floor because I understand that an agreement may have been worked out. If you are for set-asides, I think you ought to have courage enough to stand up and say it. If you believe that in America we ought to legislate unfairness for some reason, that we ought to reject merit, and that we ought to give people contracts based on their race, their color, their national origin, or their gender, it seems to me that you ought to do something that President Clinton did not have courage enough to do yesterday. That is, you ought to stand up and say it, and you ought to vote against my amendment.

It seems quite another thing to offer an amendment which basically says that you cannot give a contract to an unqualified person. The point is that many people—in fact, I would guess in almost every case the loser of competitive bidding every day in America in public contracting is qualified. It is not the point that they are not qualified. The point is they are not the best qualified. They did not offer the best bid. They did not offer the lowest price. Therefore, they should not have gotten the contract.

So if you vote for the Murray amendment, in my humble opinion, what you are doing is simply seeking political cover because you do not want to tell people you are for set-asides. I am opposed to set-asides. There is only one fair way in America to decide who gets a job; there is only one fair way to decide who gets promoted; there is only one fair way to decide who gets a contract, and that is merit.

And if you do it any other way than merit, it is inherently unfair, it is inherently divisive, and it ultimately pits people against each other based on their group. The genius of America is competition based on individual decision making and individual qualities. What makes America work is that in America we are not part of groups; we are individuals, and we have an opportunity to be judged as individuals based on our merit.

While some will say that trying to stop unfairness written into the law of the land, because for 25 years we have had unfairness written into the law of the land in set-asides and quotas, and people in America know it and they resent it and they want it changed, what we are doing when we eliminate set-asides is we are going back to the unifying principle of America. And that principle is merit.

What we are saying is that if any contractor in America wants to bid for a Government job, they have as good a chance to get that contract as anybody else. They have a chance to be judged on their merit on their bid. To do it any other way is totally and absolutely unfair. And I believe it should be rejected.

UNANIMOUS CONSENT AGREEMENT

Mr. GRAMM. Mr. President, I ask unanimous consent that there be 120 minutes for debate on the pending Gramm amendment, No. 1825, and the Murray amendment, which would be modified to reflect that it be added at the appropriate place in the bill, and that the time be equally divided between Senator Gramm and Senator Murray. And that following the conclusion or yielding back of time, the Senate proceed to vote on the Gramm amendment, to be followed immediately by a vote on the Murray amendment, as modified, and that no amendments be in order prior to the disposition of the two amendments, and that the Exon amendment, 1827, be withdrawn. Mr. President, I ask unanimous consent that the time already consumed by both sides be considered subtracted from the overall time limitation.

The PRESIDING OFFICER (Mr. BURNS). Is there objection?

Mrs. MURRAY. Reserving the right to object. Mr. President, I will not object. I would just like to know how much time would be left then on both sides?

The PRESIDING OFFICER. The Senator from Washington would have 1 hour and the Senator from Texas would have 44 minutes.

Mrs. MURRAY. Thank you, Mr. President.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Reserving the right to object. I would like the stipulation added to give this Senator 10 minutes.

The PRESIDING OFFICER. Would the Senator from Pennsylvania restate his request?

Mr. SPECTER. As I understand it, there is 1 hour on each side.

The PRESIDING OFFICER. The Senator from Washington has 1 hour. The Senator from Texas has 44 minutes.

Mr. SPECTER. Perhaps I can inquire of the Senator from Washington if I might have 10 minutes on your side?

Mrs. MURRAY. I would be willing to yield 10 minutes from my side to the Senator.

Mr. SPECTER. I thank the chair. I will not object.

The PRESIDING OFFICER. Is there objection?

Hearing none, so ordered.

So, the amendment (No. 1826), as modified, is as follows:

At the appropriate place in the bill, insert the following:

SEC. . None of the funds made available in this Act may be used for any program for the selection of Federal Government contractors when such program results in the award of Federal contracts to unqualified persons, in reverse discrimination, or in quotas, or is inconsistent with the decision of the Supreme Court of the United States in *Adarand Constructors, Inc. v. Peña* on June 12, 1995.

The PRESIDING OFFICER. Who yields time?

Mrs. MURRAY addressed the Chair.

Mrs. MURRAY. Mr. President, I sit here tonight and I think about the words "affirmative action," and I listened to the words on the floor. I wonder sometimes if we have all grown up in the same country because I grew up in a country that said you have equal opportunity, an equal chance and an equal ability in this life to get a good education, to get a good job and make it in this country.

Mr. President, that is what the affirmative action program means to this Senator from the State of Washington who stands here tonight on the floor of the Senate as one of eight women in this body.

Mr. President, when I hear the words "quotas," "reverse discrimination," "preferences for unqualified individuals," I am astounded because that is not what I see in affirmative action today. And I think it is a twisting of the debate to try and make people think this program is about something that it is not about. This program is about giving people an ability to make it in a country where we care about all individuals, no matter who they are or where they come from or what they look like.

And I think that is a particularly important agenda to retain in this country. It certainly is one I want for my children and my grandchildren who will follow me.

The amendment that I have put forward says quite clearly that no Federal funds can go to any affirmative action program that results in quotas, in reverse discrimination, or in the hiring of unqualified persons. The amendment makes it very clear to the agency that its affirmative action programs must be completely consistent with the Supreme Court's recent decision in the *Adarand* case that affirmative action programs could be justified only if they served a compelling interest and were narrowly tailored.

The amendment recognizes that the battle against discrimination in America has not yet been won. And I invite all of you to go out into our schools, to go out into our institutes of higher education, to go out into the workplace and see that it is not yet won for women and for minorities. And affirmative action programs are very important to winning that battle.

Mr. President, as I listen to the amendment that comes before us—and I heard my colleague from Texas say he was going to offer this amendment on every appropriations bill—I wonder how much money he is talking about and who he is going after. I did not have time, of course, to put this into a chart that all of you could see. Frankly, I thought I would save the Senate money because that is what we are trying to do. So I did not make a chart. But I will share with you what I have on this.

The total awards that are given in Government contracting, prime contracts, is \$160 billion. Of that, \$1.9 billion—\$1.9 billion—out of \$160 billion go